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CORPORATE CONTROL CONSULTING

CORPORATE AND INVESTOR RELATIONS

SECURITYHOLDER SOLICITATION

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Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

FCC MAIL BRANCH

Re: S. 1492 the Telephone Consumer Protection Act of 1991
[47 U.S.C. 227] - Notice of Proposed Rulemaking.

Dear Ladies and Gentlemen:

I am writing on behalf of King TeleServices, the telemarketing service arm of D. F. King & Co., Inc. King TeleServices, which engages in a variety of telemarketing assignments on behalf of a diverse client base, is submitting the following comments on certain sections of the above-captioned Notice of Proposed Rulemaking.

I. Automatic Dialers v. Automatic Dialer and Recorded Message Players

At the outset, I would like to differentiate between automatic dialers ("Auto Dialers") and automatic dialer and recorded message players ("ADRMP"). Auto Dialers are systems which simply automate the process of making a telephone call. The product of important technological advancements, these systems serve as the "fingers" for live telemarketing representatives, immediately linking them with the telephone subscriber. At King TeleServices, their principal function is to improve productivity, for example, by weeding out unanswered calls and busy signals. In fact, the call recipients should never know when an Auto Dialer is involved.

In contrast, ADRMP systems automatically dial and then deliver prerecorded messages. The Federal Communications Commission (the "Commission") itself notes that in 1991 only 9% of all telemarketing complaints received by the Commission involved live operators, while the remaining 91% involved complaints about ADRMP systems. In this connection, I believe the Commission is taking appropriate steps to regulate the intrusive use of ADRMP systems by the proposals to mandate proper identification of the caller and automatic release of the called party's line within 5 seconds. I urge the Commission, however, to clearly distinguish between the technologies when promulgating regulations. Auto Dialers play a significant yet unintrusive role in the telemarketing industry and the regulations should clearly distinguish between the systems to avoid confusion and unintended effects.

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II. Telephone Solicitation To Residential Subscribers

I refer the Commission to my comments set forth in Section I, *supra*. As discussed, I support the Commission's proposal to address line seizure problems which will require ADRMP systems to release the called line within a reasonable period of time. Since the vast majority of consumer complaints involve line seizure, I believe the Commission's response to this problem is appropriate and necessary. In contrast, live solicitations, whether implemented by Auto Dialers or otherwise, provide the consumer with the ultimate veto power - the ability to hang up and terminate the call without line seizure problems. I believe this approach is reasonable, proper and consistent with Constitutional protections of free speech and Congressional intent.

The Telephone Consumer Protection Act of 1991 (the "TCPA") also directs the Commission "to initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object." We also recognize the TCPA has stated that "individuals' privacy rights, public safety interests and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices." Consistent with what I believe to be the spirit and intent of the Act, I offer the following comments.

First, the Commission is considering "the establishment and operation of a single national database to compile a list of telephone numbers of residential telephone subscribers who object to receiving telephone solicitations." I respectfully submit that this option is unworkable, particularly in light of the President's comments that " . . . the requirements of the Act will be met at the least possible cost to the economy."

Observers have estimated that the start-up costs of such a system would total approximately \$75 million, with an additional \$25 million in yearly maintenance fees. Given that the Commission has noted that the inherent limitations of such a system would fail to satisfy consumer expectations, I seriously question the efficacy of such a program. Indeed, a cost benefit analysis would find little or no palpable benefit. Further clouding the issue, privacy advocates have raised a host of additional problems inherent in such a system which issues are themselves inconsistent with the creation and maintenance of such a system.

Second, network technologies have been raised as an alternative to permit subscribers to screen out unwanted calls. My technical advisors report that such an option is unworkable on a local basis, given the present level of technical capabilities. As the President of a national telemarketing firm, I am advised of even greater technical difficulties inherent in implementing such a nationwide system. Simply put, existing technology will not support such a proposal. A third option, special directory marketings, also appears unworkable on a national basis for a plethora of obvious reasons, many of which have already been recited by the Commission.

I do, however, wish to express my support for the mandated establishment of company specific "do not call" lists. In fact, King TeleServices long ago adopted such a procedure which, I submit, is efficacious.

Our decision to enter the telemarketing services industry was made after a rigorous economic analysis. While highly competitive, telemarketing is a natural outgrowth of our core business and consistent with our overall corporate strategy of building businesses on a long-term

basis. Prior to committing our capital, however, we examined telemarketing's compatibility with our core business and our existing corporate philosophy which requires the highest ethical and moral standards. At that time, we saw the need to adopt policies and procedures which would address privacy concerns and minimize the intrusiveness of our activities. In our view, the long term viability of the business required such an approach. Accordingly, King TeleServices adopted the policy of establishing its own "do not call" list.

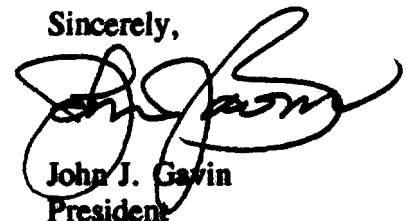
Our experience demonstrates that a self-policing system adequately balances the privacy rights of consumers with our own commercial needs. Further, we have found compliance costs to be manageable. We have also found that such a system makes good business sense, in that we avoid contacting those individuals unlikely to participate in a marketing survey or purchase our client's goods or services by telephone. In turn, the individual benefits since he or she has the option to selectively include themselves on specific "do not call" lists. Finally, the self-policing system avoids the necessity of creating another layer of bureaucracy at substantial costs to taxpayers - while adequately maintaining privacy rights.

In this connection, we see the need for mandatory regulations to ensure industry-wide compliance. I believe that the overwhelming majority of reputable firms will agree with this position. Accurate record keeping and evidence of compliance are reasonable costs to be incurred by reputable firms. The benefits are palpable, the costs negligible and the consumer privacy rights will be protected. I urge your further consideration of this important safeguard.

In connection with time of day restrictions, the Commission's approach makes eminent sense. Voluntary compliance with reasonable time of day restrictions is "good business etiquette" and commercially mandated. Restrictions are not necessary since the marketplace will effectively police itself.

In closing, I would like to note the rapidly growing economic importance of the telemarketing industry. Congress itself delineated its economic vitality and consumer acceptance as evidenced by an explosive growth in sales since 1984. We have created jobs and disposable incomes and generated valuable tax dollars since entering the telemarketing field. The overall benefits to the national economy cannot be overstated in this recessionary environment. I urge the Commission to weigh these considerations when examining any proposed regulatory measures.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Gavin", is written over a printed name and title.

John J. Gavin
President